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The Voice Is What Matters . . .

. . . For the first time in our history we are positively required to speak when we may choose not to speak, or we are frightened into silence when we might otherwise choose to speak out. This is a new kind of censorship for us, although it is not new in the long record of man's repression of man. If free and loyal men must swear fealty by words more stringent on the conscience than those required by the Constitution itself, then why not fealty to a particular church or political party or code of conduct? Men have had to do these things in the past, with their necks as hostage if they refused. It was not for fealty by fear that America was discovered, colonized, and matured. This is not the voice of America at Valley Forge, the Alamo, or the Bulge. It is the voice of the enemy within imitating the methods of the enemy without.

The voice is what matters, its quality of speech and its quality of expressive silence. It must be the voice of Jefferson speaking of the illimitable freedom of the human mind, and with him Washington and Hamilton and Lincoln and Wilson and Roosevelt. . .

—JUDGE CURTIS BOK

Philadelphia Court of Common Pleas

Courtesy *Saturday Review*

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Volume 4 SEPTEMBER - OCTOBER, 1953 Number 1

BENJAMIN WEINTROUB, Editor

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. . . . THOSE ALONE MAY BE SERVANTS OF THE LAW WHO LABOR WITH LEARNING, COURAGE AND DEVOTION TO PRESERVE LIBERTY AND PROMOTE JUSTICE.

—University of Virginia Law School.

President Annes Appoints Committee Chairmen

The hopes of our new president for a year fruitful with accomplishments for the good of The Decalogue Society rest upon the chairmen of our organization's committees, the list of which follows.

"The men who are to supply the leadership and carry on our Society's manifold activities in its relation to the profession and the community have my utmost confidence," Annes said. "It is through them that we shall enhance the prestige of our bar association and maintain our standing as a constructive factor for civic good in our city and state."

In several conferences with the chairmen, Annes urged the need for the enlistment of the interest of the entire membership in the activities ahead.

Standing Committees and Chairmen, 1953-1954

Budget and Auditing	Roy I. Levinson
Civic Affairs	Elmer Gertz
Constitution and By-Laws	Maxwell N. Andalman
Decalogue Journal	Benjamin Weintroub
Directory and Diary	Oscar M. Nudelman
Entertainment	Morton Schaeffer
Ethics and Inquiry	Samuel Allen
Forum	Saul Epton
Foundation Fund	Nathan Schwartz
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Insurance	Solomon Jesmer
Inter Bar Council	Carl B. Sussman
Judiciary	Reuben S. Flacks
Labor Law	Harry Abrahams
Legal Aid	Matilda Fenberg
Legal Education	Maynard I. Wishner
Legislation	Harry G. Fins
Membership	Max A. Reinstein
Membership Retention and Conservation	Marvin Victor
National Organization	Harry D. Cohen
Organization and Social Welfare	Jack E. Dwork
Placement & Employment	Michael Levin
Planning	Bernard H. Sokol H. Burton Schatz
Public Relations	Sen. Marshall Korshak Archie H. Cohen
Scholarships	Judge Samuel B. Epstein Harry A. Iseberg
Speakers Bureau	Alex M. Golman
Public Offices	Judge George M. Schatz
Younger Members Activities	Elliot S. Epstein

Inaugural Address of New President

The installation ceremonies inducting into office Paul G. Annes as the new president of The Decalogue Society of Lawyers, were marked by a large attendance of members and guests. Representatives of the Bench and Bar stressed the eminent fitness of Annes, the Society officers and members of the Board for their respective posts.

The affair took place at a luncheon at the Covenant Club, June 19, 1953. Judge Samuel B. Epstein of the Superior Court of Cook County was the installing officer. States Attorney John Gutknecht made the principal address. Past president Benjamin Weintroub made the presentation of a gift to the retiring president Harry A. Iseberg. Other officers installed were Elmer Gertz, first vice president, Bernard H. Sokol, second vice president, Harry H. Malkin, treasurer, Judge Norman Eiger, financial secretary, and Judge Richard Fischer, executive secretary. The president's address follows:

PAUL G. ANNES

Our Society, like every institution, is the lengthened shadow of those who have been active in its work. On occasions such as this, sentiment and memory recapture the past, and we think with gratitude and pleasure of the many members whose planning and exertions over the years have given The Decalogue Society its present respected position. I wish time permitted to mention their individual contributions. A few words, however, about our retiring president. In his report, published in the last issue of our Journal, he has told us something of the past year's accomplishments and about the members responsible for them. If you have not yet read this report, I urge you to do so. It will give you an idea of Mr. Iseberg's own devotion to the Society, and of the fine record of achievement during his administration. I am certain to call on him for help during the months to come, and am sure to get it.

You have elected me as your president for the coming year. How well you have done, the year will tell. I sincerely thank the Nominating Committee for their confidence in me, and the members for their confidence in the Committee, accepting their choice. My intention and hope is that I shall not disappoint you—at least, not too badly.

For the most part, we shall be travelling good old roads. Thus, we shall continue the program of legal education of our members: lectures on current developments in the general as well as in some specialized fields of the Law, of interest and value to the general practitioner; one or two conferences during the year, giving more concentrated attention to some special problems. Perhaps the first one, in the fall, might be on "Pre-Trial and Trial Practice and Procedure." We take some credit for having been pioneers during the last decade in this kind of post-admission education of the practicing lawyer. We are young enough as an organization, flexible enough and numerous enough, without being overly so, (there are

about 1500 of us) to act as an experimental laboratory inquiring into the unmet educational needs of the Bar and the techniques of meeting them. In that spirit of inquiry we shall also continue to have discussion groups, interpreting for ourselves the Great Ideas of Western Man in the context of our own times and needs. We mean it always to be clear, moreover, that we are not just a competing bar association, engaged in a jurisdictional race with the general Bar Associations. Quite the contrary. A large number of our members, I venture to say most of them, are also members of these Bar Associations; we wish they all would be, and actively participating. Indeed, many of them are recognized leaders there. As I see it, we have an additional and a distinct purpose, suggested by the double aspect of our name. What, then, ought we particularly aim to do as members of a *Decalogue* Society, having the special sensitivities of a minority group and the skills and interests of *Lawyers*?

First of all, The Decalogue Society of Lawyers should become a national organization. Our activities ought to be duplicated in many parts of the country. For one thing, it would enable us much more effectively to do some of the things we have been thinking about. For example, we are currently in the planning phase of fund raising for scholarships and fellowships to Israeli law students and scholars to enable them to study and do research work in American universities. This is part of that two-way cultural traffic between Israel and the world which we should all look forward to, particularly in this country, where we know so well what a miracle and a blessing has come out of the fusion of cultures of many peoples from many lands. Here is a project that can best be carried out by chapters in many cities working together.

We recognize duties and opportunities closer home, too. The Chicago metropolitan area has a Jewish population of over 300,000, with a number of important communal organizations. We, the organized lawyers in their midst, ought to be their legal resource and reliance. You may ask: What is there for us to do? My answer: Almost no end of things. Time will allow mentioning only the most immediate task: help these organizations to form a Community Council, to coordinate their overall planning and functions. No one is doing this job and it ought to be done. We are in an excellent position to volunteer our services.

We live in uneasy times. The world is threatened by those who would destroy our way of life. As we react to that threat, we must be ever vigilant lest in the process we ourselves give up our basic freedoms. Good motives and intentions alone are not enough to spare us the consequences of what we do; the means often beget their own ends. Lawyers are peculiarly prepared by training and tradition to help preserve the liberties of our country, the best heritage of our land. The guarantees and protection of the Constitution ought to be at all times a living fact in the daily lives of our people, regardless of color or creed or origin. It is our business accordingly, among other things, to examine and analyze public acts and pending legislation bearing on fundamental rights and to speak out clearly our conclusions to public officials, lawmakers and the community. Thus we shall serve America best, the people of the Decalogue among the rest.

My fellow members, members of the Board, and Officers. I look forward to a year of cooperative effort in our common purpose. In the depth of our practical devotion to the ideals we profess we shall all find the measure of our greatest satisfaction.

PAUL G. ANNES—BIOGRAPHICAL NOTE

Paul G. Annes, 1923 cum laude graduate of The University of Chicago Law School, was awarded by his alma mater a Distinguished Alumnus Citation in 1952. Shortly after the completion of his college studies, Annes began to take part in civic and communal affairs in this city. His range of public service has been consistent and wide. In 1945 and 1946 he was Chairman of the Executive Committee—First Division—of the Council of Social Agencies of Chicago. He was Chairman of a committee which introduced social services to inmates of the Cook County Jail. He was President of the City Club (1946-1948). In 1951 he was elected President and Chairman of the Board of the Chicago Council against Racial and Religious Discrimination, an organization composed of over one hundred civic agencies, the major labor organizations, churches and communal bodies in this City and its environs. Annes has long been a Zionist. He is a Vice-President of the Chicago Council of American Jewish Congress.

Active in the practice of law, specializing in Federal Taxation, he writes in his professional field as well as on subjects of general cultural interest. He has been a frequent lecturer on Federal Taxation before The Decalogue Society of Lawyers.

Mr. and Mrs. Annes are the parents of two sons, George and Robert.

Judge Miner Sponsors Marital Conciliation Act

Member, Judge Julius H. Miner of the Circuit Court of Cook County, was the moving force behind the passage of an Act, effective July 1, 1953, providing for at least sixty days notice of intention to file bills for divorce, annulment or separate maintenance and further providing for administrative aids for conciliation purposes during this period.

In a message to the Judges and Clerks of the Illinois Courts, Judge Miner stated in commenting on this act—"In such a conference it can be demonstrated that any dull-witted person can apply for divorce, but that it requires character to stay married and protect one's offspring; that marriage is the most inviolable and irrevocable of all contracts; that while there is no perfection in marriage, it thrives on sharing, giving, helping, sacrificing and doing things for each other, rich or poor, for better or worse, in sickness or in health; that its purpose and fulfillment is in the sharing of love and care of children."

The law operates as follows: a notice of intention to file the applicable bill must be filed, not less than sixty days and not more than one year before such bill is filed, with the clerk of a Court having jurisdiction and a fee of one dollar paid. If the motion is granted, then suit may be filed as heretofore; when the bill is later filed, the first paragraph of the complaint must state the date and court in which the notice was filed. This waiting period may be set aside upon motion supported by affidavits showing to satisfy the Court that immediate action is necessary.

The judge may invite the parties and their counsel, if any, for informal conferences to attempt to conciliate them and in addition, may appoint administrative aids employed and paid for by the city or county to safeguard the family interests.

As Judge Miner says, "Experience demonstrated that out of an equal number of married couples, for every couple reconciled during litigation five couples have been conciliated before suits were instituted."

A mandamus suit was filed to contest the constitutionality of this act. After a hearing, member Judge Harry M. Fisher dismissed this suit. An appeal to the Illinois Supreme Court is being perfected, and there should be a final ruling from the high court in the early fall.

SAUL A. EPTON

Member of our Board of Managers, Saul A. Epton, was elected vice-president of the Federation of Insurance Counselors at its recent convention in Bedford, Pennsylvania. The Federation consists of over six hundred lawyers from the various states of the Union, who are especially interested in problems of insurance law.

LAW SCHOOL SCHOLARSHIPS FOR ISRAELI STUDENTS

Member Judge Samuel B. Epstein of the Superior Court, Cook County, is chairman of the Society's project to finance scholarships for Israeli students in American Law Schools. The Northwestern University Law School has agreed to waive tuition for at least one Israel student, annually, provided that our Society finances his maintenance. The cost of the whole undertaking involves an expenditure of about five thousand dollars per year. Judge Epstein urges the participation of the entire Decalogue membership in this worthy cause by sending in contributions payable to The Decalogue Society of Lawyers.

Member Nathan Schwartz is executive vice-chairman of this project.

Decalogue Journal in Congressional Record

Member Joseph L. Nellis' article "A Congressional Code of Fair Conduct" published in Volume 3, No. 5 of our Journal was reprinted in the June 18th, 1953 issue of the Congressional Record. The insertion in the Record was made at the request of Senator Estes Kefauver.

ALEXANDER KAPLAN

Member Alexander Kaplan was elected president of the American Blood Research Society and chairman of the Board of Directors of the Society for Advancement of Retarded Children.

Death Comes to a Feudal Principle

By MILTON M. HERMANN

Member Milton M. Hermann has been engaged in the general practice of law since 1929. He is an instructor in future interests, mortgages, and torts at John Marshall Law School where he also teaches, in The Lawyers Institute, appellate practice and procedure and brief writing. During World War II Hermann was chief of the Appellate Division, the Midwest Region of the Office of Price Administration.

On June 23, 1953, the Illinois Legislature brought to an unlamented end a principle of the law of real property which has been with us since feudal times. On that day the Legislature passed, and on July 15th Governor Stratton approved, House Bill No. 402, abolishing the famous—or, as you will, the infamous—Rule in Shelley's Case.

Lest the reader immediately turn his attention at this point to the latest piece of mystery fiction, it should be said at once that the Rule in Shelley's Case (hereinafter sometimes referred to as "the Rule") has been a matter of very substantial practical importance to the Illinois lawyer, and the passage of the above statute has only partially diminished its significance.

Generations of law students and lawyers have been plagued by incomprehensible and—at times—irresponsible discussions of the Rule; and—like the otherwise literate person who has come to abhor Shakespeare because of inept "teaching" of the works of the great Bard at high school and college and who, in consequence, misses all the beauty and majesty of Hamlet and Macbeth during all his adult life—the lawyer, also because of inept "teaching," frequently flees at the mere mention of the Rule in Shelley's Case or, indeed, any reference to a principle of future interests.

Yet failure to understand the essential principles of the Rule has too often been responsible for total frustration of the wishes of many testators, grantors, and settlors; and this though the essential aspects of the Rule are fairly easy to grasp, and the Rule itself a matter of sheer fascination—although, at times, of repugnancy—for the practitioner.

That this discussion may not be considered purely academic and historical, in view of the passage of House Bill No. 402, it should be immediately observed that it is still extremely important to understand the elements of the Rule; for House Bill No. 402, by its terms, *affects only deeds, wills and other instruments taking effect after the effective date of the Act.* Indeed, any attempt to affect instruments which became effective prior to the passage of the Act would doubtless have rendered the statute vulnerable to attack upon constitutional grounds. Accordingly, the Rule is still in full force and effect as to any deed or trust agreement which was delivered prior to July, 1953, and as to any Will where the testator died prior to that date. Doubtless the Rule will continue to be a matter of vital importance for many years to come; for in passing upon any title which involves a deed, will, or trust agreement which became effective prior to July, 1953, it will be as necessary to keep the Rule in mind in the future as it was before the passage of the Act.

If these considerations do not convince the practitioner of the importance of grasping the essential aspects of the Rule, another may be mentioned. The Act, in terms, simply provides that "the rule of property known as the Rule in Shelley's Case, is abolished." It becomes important, then, to know precisely what that Rule is, lest it be assumed that the Act abolished more than it has.

The average practitioner, if asked to define the Rule, would be apt to say that where a conveyance or devise was made by A "to B and his heirs" at the common law, B received a fee simple estate because the words "and his heirs" are "words of limitation and not of purchase." This statement is true as far as it goes, *but it is not the Rule in Shelley's Case.* If pressed further to explain the meaning of this statement, our average practitioner might have considerable difficulty in throwing light upon it. The basic idea, however, underlying this statement is simple enough. In an instrument of conveyance some words are words of purchase and some are words of limitation. Words of purchase indicate the *person or persons* who are to receive an interest in property by virtue of the conveyance or devise. In the law of property, any person is a purchaser who is designated *as the person* who is to take an interest in the property in question, whether he pays a valuable consideration for such interest or not. Thus, if A, by an *inter vivos* gift, transfers valuable securities to B, B is a purchaser. If A, by his Will, devises real estate to B, B is a purchaser. *A fortiori,* if A transfers any property to B for a valuable consideration, B is a purchaser.

Words of limitation, on the other hand, are any words in a conveyance or devise which indicate the *size* of the estate which the purchaser is to take under the instrument creating the interest; they fix the "limits" of the estate. Thus, if A devises real estate "to B for life" the words "to B" are words of purchase; the words "for life" are words of limitation. If A leases a store "to B for one year," the words "to B" are words of purchase; the words "for one year" are words of limitation.

In like manner, the common law judges, in the early part of the 13th century, took the view that when A conveyed land "to B and his heirs" the words "to B" were words of purchase, but the words "and his heirs" were words of limitation. They arrived at this conclusion because of two principal inter-related considerations: (1) the method of conveying a freehold estate in real property at the common law was by livery of seisin, which was essentially a manual, symbolical delivery of possession to the grantee. In

order to make a delivery, it is obviously necessary to have a grantee who is ready, able, and willing to take; (2) The common law had adopted the principle of the civil law that a living man can have no heirs. (*Nemo est haeres viventis.* No one is the heir of a living person.) Indeed, even at his death a man left no "heirs," but only a single "heir" under the feudal principle of primogeniture. Accordingly, when a conveyance was made "to B and his heirs" there were no heirs of B ready, willing, and able to take because B, being a living person, had no heirs. The heirs of B, then, could not take *as purchasers* under the grant from A.

To avoid holding that the expression "and his heirs" was surplusage, therefore, the English courts held that the words simply constituted a formula for the purpose of indicating the *size* of the estate which *B himself received* by virtue of the grant. This holding, of course, was to the effect that B, by this language, received the greatest estate known to the law—a fee simple—and that his heirs received nothing. If, perchance, the heir of B ultimately received any interest in the land it was by descent from B (provided B had not disposed of the land during his lifetime) and not by purchase from A. And upon reflection it will be seen that there are only two ways in which one *can* obtain an interest in property: by purchase or by operation of law; and one takes by operation of law only if one takes by descent under the laws of intestacy.

When the courts held that the words "and his heirs" were words of "limitation," they did not mean, of course, that they limited B's estate in the sense of "restricting" it, since a fee simple is the largest possible estate one can have.

In our language, of course, words do not always or even usually have a single meaning, but they frequently have several rich and varied meanings. "A word," said Justice Holmes, "is not a crystal, transparent and clear; it is the skin of a living thought." Judge Jerome Frank expressed the same thought when he said that "we keep ink in a pen and we keep pigs in a pen, but we easily distinguish the different kinds of penmanship."

Here, then, the word "limitation" should not be equated with the word "restriction;" it is, rather, synonymous with the word "definition." Plato, in his *Dialogues,* said that "every definition is a limitation," in the sense that when one defines a thing one indicates *what it is and what it is not* and thus fixes "limits" or boundaries about the thing defined. And just as in mathematics we sometimes refer to a "limit" of infinity, so here we use the word "limit" to refer to extent and not restriction. The student's stare of incomprehension when told that a conveyance "to B and his heirs" gave B a fee simple at the common law—the greatest estate known to the law—"because 'heirs' is a word of 'limitation'" is doubtless due, in large measure, to his inability to understand that "limitation" is not invariably the equivalent of "restriction."

It is an interesting commentary on the rather primitive character of the legal thinking of the early common law judges that they made a fetish of the word "heirs" and invested it with a magical quality. Having concluded that a conveyance "to B and his heirs" created a fee simple estate in B, they reached the illogical and unnecessary conclusion that the *only* means of creating a fee simple was through the use of this sacred formula. The word "heirs" became a *sine qua non*—an absolutely indispensable ritual if a grantor wished to convey an estate in fee simple. No matter how clearly A manifested his intention that B was to have a fee—indeed, even though he conveyed "to B in fee simple"—B received no fee simple at the common law in the absence of the word "heirs."

At the common law, then, under a conveyance "to B and his heirs," B received a fee simple and his heirs received nothing. *But this was not the Rule in Shelley's Case.* It was, instead, a rule recognized as early as the year 1225 in *D'Arundel's Case.*

The Rule in Shelley's Case bears a kinship to the above rule but is certainly not identical with it; and inasmuch as the legislature in terms has simply abolished "the Rule in Shelley's Case" it becomes important that we understand thoroughly the precise scope of that Rule or we shall grievously err in our assumptions as to what the Act has abolished.

The Rule in Shelley's Case does not involve a grant "to B *and* his heirs," but "to B *for life, remainder* to his heirs." The Rule is generally assumed to have been stated for the first time in *Shelley's Case,* decided by the English courts during the reign of Elizabeth I in 1581 (1 Co. Rep. 93d) but it is much older in application; it was recognized in 1366 in the *Provost of Beverley's Case* (Y. B. 40 Edw. 3, Hil. pl. 18) and perhaps in 1316 in *Abel's Case* (Y. B. 18 Edw. 2, 577). It was not, however, until *Shelley's Case* that the Rule was expressed in the classical terms since abhorred by law students from generation to generation. Lord Coke, who was himself of counsel for the defendant, stated the Rule in his report of the case, in language which could hardly have been more incomprehensible and obscure:

> "The defendant's counsel answered that it was a rule in law when the ancestor, by any gift or conveyance, takes an estate of freehold, and in the same gift or conveyance an estate is limited either mediately or immediately to his heirs in fee or in tail, that always in such cases 'the heirs' are words of limitation of the estate, and not words of purchase."

Coke was undoubtedly a lawyer and jurist of exceptional attainments; but his statement of the Rule can hardly be viewed as a model of precise and clear draftmanship. Indeed, much of the difficulty that generations of law students and lawyers (and may we add, respectfully, *judges*) have had with the Rule is doubtless due to the abstruse and vague manner in which it was stated by Coke.

Perhaps the Rule can be more readily understood if we paraphrase it as follows:

> If a life estate in land is conveyed or devised to B, and the same instrument purports to give a remainder, mediately or immediately, to the heirs of B, or to the heirs of B's body, and the life

estate and remainder are both of the same quality (that is, both either legal estates or equitable estates), B takes the remainder and his heirs take nothing.

From the above paraphrase of the Rule, it will be readily apparent that there are four prerequisites for its application in any case:

(1) There must be a life estate created in one person, usually referred to as "the ancestor;"

(2) There must be a remainder to the heirs or the heirs of the body of that person, but it is immaterial whether such remainder follow immediately after the life estate or be separated from it by an intervening estate or estates (the meaning, of course, of the phrase "mediately or immediately");

(3) Both the life estate and the remainder must be created by the same instrument (really a corollary of number 2 above, since *every remainder,* by definition, must be created by the same conveyance or devise which created the preceding estate or estates); and

(4) Both the life estate and the remainder must be of the same quality, that is, they must both be either legal or equitable estates.

When the above four prerequisites have been present, the courts have applied the Rule regardless of the intention of the grantor, testator or settlor and, indeed, in such manner in most cases as to frustrate such intention completely. The courts have accomplished this by stating that the Rule is "a rule of law, not a rule of construction." The Rule is used, then, not to *ascertain* the intent of the maker of the instrument but to *defeat* that intent. The effect of such a holding has been to give to the word "heirs" the efficacy of a word of art; and in so doing the courts have ridden rough-shod over the dispositive schemes of innumerable testators, grantors, and settlors. They have thus bowed in homage before an idol of their own creation, the Rule in Shelley's Case.

A few simple examples will illustrate the operation of the Rule, and demonstrate the havoc wrought upon many dispositive plans by this rigid and stiffnecked application of a principle of law which, as we shall presently see, owes its origin purely to feudal considerations, and which should have been rejected long ago by American courts as foreign to the spirit of our institutions.

The prototype and the simplest of all Shelley's Case problems is the following: A, by deed or will, conveys or devises real estate "to B for his lifetime only, and upon his death, the land to go to the persons who shall be B's heirs at law under the Statute of Descent." The four prerequisites for the application of the Rule, above stated, are of course present, and the courts (particularly the courts of this State) have applied the Rule as inexorably and inflexibly as the laws of the Medes and the Persians. The legal effect, then, of the above conveyance or devise is *to give B the remainder which the instrument purports to give to B's heirs.* As a consequence, B has a life estate by the express language of the instrument, and a remainder in fee simple by the application of the Rule.

At this point, a wholly separate and independent rule of law comes into play, the doctrine of merger. The life estate, being unseparated in the above example from the remainder in fee simple by any intervening estate, is merged in the remainder, and the net effect of the conveyance or devise is to give B a fee simple in possession.

If, on the other hand, the conveyance or devise were "to B for life, remainder to C for life, remainder to B's heirs," the Rule in Shelley's Case would also apply so as to give B the remainder in fee which the instrument purports to give to his heirs; but since B's life estate is separated here from B's remainder in fee by an intervening life estate in C, there can be no *merger* of B's two estates at this juncture. Nevertheless the Rule in Shelley's Case has fully operated; *its office is simply to give to the ancestor the remainder which the instrument purports to give to his heirs;* and in consequence B has two estates: a life estate created by the express language of the instrument, and a remainder in fee simple by virtue of the Rule. In this case, also, the Rule has been fully applied; only the rule of merger, which is *not a component part of the Rule in Shelley's Case,* has not applied.

The operation of the Rule, where a merger of the life estate and the remainder cannot be effected, will be readily seen if one considers the result if B were to quitclaim all of his interest in the premises to X. X would then have two estates: a life estate in possession (measured by the life of B) and a remainder in fee simple, which remainder is to take effect in possession upon the termination of C's life estate. Accordingly, X would occupy the land during the lifetime of B; upon B's death C would occupy the land during his own lifetime; and upon C's death X would again take possession, this time possessed of a fee. If, while X were in possession by virtue of the life estate, C were to die, then of course the life estate would immediately merge in the fee and X would be in possession of a fee simple estate.

Since the Rule "is a rule of law, not a rule of construction," no assertion in the instrument, directly or indirectly, that the Rule is not to apply, has any effect. Thus in *Wilson v. Harrold,* 288 Ill. 389 (1919) land was conveyed "to Charley Harrold in trust during his natural life and at his death to his lawful heirs, *it being expressly understood that but a life estate is hereby deeded to said Charley Harrold* and he cannot make a good title by deed or other conveyance but is to have the use of the land to be conveyed, only, and is to hold it absolutely in trust for his lawful heirs." The court ignored the explicit statement of the grantor's intent to create only a life estate in Charley Harrold and a remainder to his heirs as purchasers, and entered a decree quieting title in said grantee in fee simple, thus enabling him to deprive his heirs of any interest whatever in the premises notwithstanding the express direction of the grantor to the contrary.

In *Porter v. Cutler,* 380 Ill. 215 (1942) real estate was left by will "to Flora Cashman . . . to have and

to hold unto the said Flora Cashman for and during the term of her natural life, remainder to the heirs of the said Flora Cashman living at the death of the said Flora Cashman." It was contended by counsel for the heirs that the Rule should not apply because the "heirs," as described in the Will, were not "an undeveloped aggregate or class to take in succession by descent from generation to generation" but on the contrary "a definite group of persons who must be living at a particular point of time in order to take." Indeed, our Supreme Court, in a number of previous cases, had intimated that where the word "heirs" was used in this latter sense the Rule should not apply. Yet the Court applied the Rule in the *Porter* case, giving the heirs nothing.

In *People v. Emery,* 314 Ill. 220 (1924) the Court went to even greater lengths to apply the Rule in the face of a clear intent on a settlor's part that the heirs should take as purchasers. There a deed conveyed property to trustees, with directions to pay the income to B for life and upon her death to convey the property "to such person or persons as may be entitled to inherit real estate by descent from her as heirs at law by virtue of the Statute of the State of Illinois and in the same proportions to each as they severally would have been entitled to had the same property been by them inherited from B as her heirs at law." A more explicit direction that the heirs of B *living at her death* should take as purchasers from the settlor can hardly be imagined. Nevertheless the Court held that B had an equitable life estate in the trust property, and since the instrument directed the trustees to *convey* to B's heirs upon B's death it *purported* to give the heirs an equitable remainder in fee simple; and the court therefore concluded that the Rule applied, that B received the equitable remainder in fee which the instrument purported to give to his heirs, that his equitable life estate merged in the equitable remainder in fee, and that his heirs received nothing.

If the foregoing cases do not sufficiently demonstrate the undue attachment of our Supreme Court to a rule of law which frustrates the intention of the maker of an instrument and which serves no useful purpose, another comparatively recent case should prove the point beyond peradventure. In *Lydick v. Tate,* 380 Ill. 616 (1942), T left a farm in downstate Illinois by Will to his daughter Ellen, a widow, "to have and to hold for and during her natural life, and at her death or remarriage the said land shall descend to her heirs." At the time of execution of the Will the daughter had been twice married and twice widowed, and the testator doubtless desired to give her the security of the farm during her lifetime or until her remarriage, and upon her death or remarriage to have the land go to her children. Ellen had one son by her first marriage and two sons by her second marriage. When her father, the testator, died Ellen had married for a third time, and thus by the terms of her father's Will she did not "take" the life estate. Upon her subsequent death she left a Will whereby she devised the premises in question to her two sons by her second marriage. If the Rule applied, the devise gave them title in fee simple to the entire property; otherwise the children of her son by her first marriage (said son having died in the meantime) were entitled to take an undivided interest in the premises by the terms of the Will of Ellen's father.

The Court held that the Rule applied, notwithstanding the vigorous argument that the first prerequisite for the application of the Rule, namely that the ancestor "take" a life estate, was not present, and that even under Lord Coke's statement the Rule should not apply. The devisees under Ellen's Will prevailed, and the children of Ellen's son by her first marriage took nothing. It is respectfully submitted that in the *Lydick* case the Supreme Court, in applying the Rule, went far beyond the scope of the Rule even as it had been stated by Lord Coke.

Reference has been made to the fact that the Rule owes its origin to purely feudal considerations. At the common law, during feudal times, whenever a doubt arose as to whether land was acquired by descent or by purchase, courts inclined to the view that it had been acquired by descent, stating that "title by descent is the worthier title." The reason for this preferential construction was that whenever an heir desired to take possession of a freehold estate upon the death of his ancestor, he was required, as a condition precedent, to pay a monetary tribute to the overlord, called a "relief." This was one of the many forms of onerous dues or obligations imposed under the feudal system of land tenure. In the later Middle Ages, when a person held title in fee simple his overlord was always the King. The Crown, then, derived considerable revenue from heirs who took possession of freehold estates upon the death of their ancestors. On the other hand, one who took as a purchaser was not obligated to pay this "relief" to the overlord. If, then, the courts had held that where A conveyed land "to B for life, remainder to his heirs" the heirs took as purchasers, no "relief" would have been payable to the Crown upon the death of B. Elizabeth I, like her illustrious father, Henry VIII, found herself sorely in need of funds during a great part of her reign; and it was natural that the courts should use their utmost efforts to prevent a serious loss of revenue to the sovereign. It was to the Crown's advantage, then, under the feudal system, to have the courts follow the rule recognized as early as the fourteenth century in *Abel's Case* and in the *Provost of Beverley's Case,* and reiterated in *Shelley's Case* in 1581.

The feudal system, however, never obtained in this country; and it is a sad commentary on our jurisprudence that a rule which was adopted primarily for the purpose of keeping the royal coffers properly replenished should have survived as an archaic rule of law to defeat and frustrate the intentions of grantors, testators, and settlors.

An enlightened system of jurisprudence should effectuate the intention of a maker of an instrument rather than frustrate such intention, unless the objects sought to be attained are contrary to a well-established public policy. Such a policy can hardly be urged in support of the Rule in Shelley's Case. If it be said that the Rule, by vesting a fee simple title in the ancestor,

effectuated a policy of early vesting of estates, it may be answered that our law has never proscribed an attempt to create a life estate in one person with a remainder or remainders in others. Apparently, then, remainders have never been regarded as contrary to a sound public policy. If one remainder is permissible, why not another?

One ought not to be enslaved, of course, by any rule of law, not even by a so-called rule of property. The 110 cases, (approximately) involving the Rule in Shelley's Case decided by our courts since *Baker v. Scott*, 62 Ill. 86 (1871), (the first case recognizing the Rule in Shelley's Case in Illinois) represent a slavish devotion to a feudal rule of property which should never have been a part of the jurisprudence of this State. The passage of the Act abolishing the Rule in Shelley's Case has long been overdue.

The view that the Rule should never have been adopted by the Courts of this State is in full harmony with the provisions of the Statute which adopted the common law of England as the law of this jurisdiction. The chapter of our statutes entitled "Common Law" (Chap. 28, Ill. Rev. Stat.) provides that "the common law of England, *so far as the same is applicable* and of a general nature . . . prior to the fourth year of James the First (1607) . . . shall be the rule of decision. . ." (Emphasis supplied). Our Supreme Court, on several occasions, has held that any rule of the common law recognized in England prior to the year 1607 but not in accord with the spirit of our institutions does not constitute a part of the law of this state under the above Statute. In *Komorowski v. Boston Store of Chicago*, 341 Ill. 126, 129, the Court said:

> "It has long been settled that while this State has adopted the common law, said adoption has extended only to cases where that law is applicable to the habits and condition of our society and in harmony with the genius, spirit, and objects of our institutions."

It remains to be observed that since the Rule is concerned only with the case of a conveyance or devise "to B *for life, remainder* to his heirs," the statute, having simply abolished "the Rule in Shelley's Case," has no effect whatever upon a conveyance or devise to "B *and* his heirs." It would be a major error, therefore, to assume that under the statute such a conveyance or devise, if hereafter made, will give B a life estate only and that his heirs will take as purchasers. Now, as before, B will obtain a fee simple estate. Such a conveyance or devise, of course, is comparatively rare at the present time because of the provision of our Act on Conveyances (Chap. 30, Ill. Rev. Stat., Sec. 13) to the effect that a grant or devise is presumed to convey a fee simple estate unless the instrument, expressly or by necessary implication, creates a lesser estate in the grantee. But if the language so familiar in the past, "to B and his heirs," is hereafter used in any instrument *B will still receive a fee simple estate notwithstanding the passage of the above statute.*

As has already been pointed out, the Act will have no effect upon any deed or trust instrument delivered prior to July, 1953, or any Will where the testator died prior to that date. But it should be observed that *even as to instruments which become effective after the effective date of the Act*, the Rule may continue to be a source of irritation. The Act simply provides that "the *rule of property* known as the Rule in Shelley's Case is abolished." (Emphasis supplied) There is a strong possibility, then, that our courts may hold that the Rule is still a part of our law—now as a *rule of construction*. If our courts were so to hold, any ambiguity would be resolved in favor of the application of the Rule (as a matter of preferential construction). To avoid such construction, it is suggested that the draftsman state expressly that "the rule known as the Rule in Shelley's Case shall not apply" to the particular conveyance or devise.

ROY I. LEVINSON

Roy I. Levinson, past president of The Decalogue Society of Lawyers is the newly elected president of the B'nai B'rith, Ramah Lodge. Long active in communal and civic affairs in this city, Levinson carries with him best wishes of his many friends for distinguished service in his new post.

ISRAELI SCHOLAR TO ADDRESS SOCIETY

Saul Epton, chairman of The Decalogue Forum Committee announces that Professor Benjamin Akzin, Dean of the Faculty of Law of the Hebrew University of Jerusalem, in Israel, has accepted an invitation to address our Society September 18, at a luncheon in the Covenant Club. Professor Akzin's subject will be "Law and Legal Education in Israel."

Professor Akzin taught at Harvard University, the City College of New York, the University of Paris, and served as foreign affairs specialist with the President's War Refugee Board and the Library of Congress. He has written widely in the fields of law and political science.

MARK J. SATTER

The Spring-Summer issue of the De Paul Law Review contains an article entitled "Limitations in Illinois" by member Mark J. Satter.

The author discusses occasions wherein the Illinois lawyer is called on to determine whether the Limitations Act of our state or a foreign state applies in a given situation. Certain aspects of the Tolling provisions in Illinois and elsewhere are examined.

For reprints of the article write to Mr. Satter at 134 N. La Salle, Chicago 2.

Great Books Program to Continue

Oscar M. Nudelman and Alec E. Weinrob to lead discussions.

The popularity of the Decalogue Great Books Course, initiated last year under the auspices of our Society, brought requests from a large number of our members that the lectures continue for another season. Accordingly, arrangements for sessions dealing with Great Books have been completed.

All meetings will be held, as heretofore, in the Society's headquarters, 180 W. Washington Street. The discussion program will be under the supervision of Alec E. Weinrob, a leader in last year's course and, past president Oscar M. Nudelman. The first meeting will take place Monday, September 14th, at 6:15 P.M. to 8:15 P.M. and will continue at the same hour every second Monday thereafter for a total of 18 sessions.

There will be no charge for admission. Attendance and participation are open to all members, their families and friends. Messrs. Nudelman and Weinrob both of whose offices are at 134 N. La Salle St. urge all who are interested in the Great Books course to contact them as early as possible for additional information bearing on the forthcoming studies.

The following in part, is a list of authors and volumes that will be the subjects of study this year:

Opening session: Introduction and Exemplary Reading of the *Declaration of Independence: The Old Testament:* 1 Kings, 21; 11 Samuel, 11, 12.

Plato: *Apology, Crito.*

Aristophanes: *Lysistrata, Birds, Clouds.*

Aristotle: *Politics,* Book 1.

Plutarch: *Lycurgus, Numa, and Comparison; Alexander, Caesar.*

St. Thomas Aquinas: *Treatise on Law (Summa Theologica).*

Machiavelli: *The Prince.*

Shakespeare: *Hamlet.*

Locke: *Of Civil Government* (second essay).

Rousseau: *The Social Contract,* Books 1-11. *Federalist Papers; The Constitution of the United States.*

Marx: *Communist Manifesto.*

BERNARD B. BRODY

Member Bernard B. Brody was recently elected president of The Chicago Lodge, B'nai B'rith.

APPLICATIONS FOR MEMBERSHIP

MAX A. REINSTEIN, *Chairman*

APPLICANTS	*SPONSORS*
Irwin S. Baskes	Elmer Gertz
Aaron P. Brill	Philip Heller and Jacob Smolensky
Eugene Elkin	Benjamin Weintroub and Joseph Marshall
Elliot S. Epstein	Maynard Wishner and Judge Samuel B. Epstein
Michael J. Fasman	Oscar M. Nudelman
Samuel Gore	Sam Silver
Nissen N. Gross	Harry A. Iseberg and Maynard Wishner
Sanford Kirsh	Harry A. Iseberg
Jack Levin	Benjamin Weintroub and Elmer Gertz
Foster Schultz	Oscar M. Nudelman and Nathan Schwartz
Morris Topol	Sam Silver
Sol Brandzel	Maurice Greiman and Isador Brandzel
Bernard B. Weissbourd	Paul G. Annes and Benjamin Weintroub

WRIT OF ERROR IN CAPITAL CASES

In an article entitled "Drumhead Justice in Capital Cases?" (The Decalogue Journal, 1951, Vol. I, No. 3), member Everett Lewy pointed out that in Illinois a convicted person sentenced to death had no right to a review of his trial—that a Writ of Error and Supersedeas was a matter of grace only and not a matter of right. Since World War II three or four persons, all of them Negroes, actually were executed without a review of the record of their trial because of such a denial of a Writ of Error and Supersedeas.

Member Lewy advises that the Supreme Court, under the leadership of Chief Justice Schaeffer, recently recommended to the Governor an amendment to this law and that this amendment, (Senate Bill 91) has been enacted into law. Accordingly, a Writ of Error and Supersedeas has now become a matter of right in Illinois in all cases involving the death penalty.

SORROW

The Decalogue Society of Lawyers announces with deep regret the death of the following members:

Martin G. Loeff Hyman Reeder

Appeals Practice and Procedure Under the Illinois Unemployment Compensation Act

By HENRY X. DIETCH

Member Henry X. Dietch is a former Hearing Officer for the Department of Labor. He is village president of the village of Park Forest.

A comprehensive system of appeals is outlined in the Unemployment Compensation Act in conjunction with the provisions of the Administrative Review Act. The filing of appeals that are applicable within the agency (Department of Labor) are tailored to fit the particular kind of administrative action appealed from and are provided for specifically in the Unemployment Compensation Act. However, once the disputed matter is taken to the Courts, then the provisions of the Administrative Review Act apply.

There are five categories of administrative action which may result in an appeal and which will be considered in this article. They are as follows:

(a) Determination and Assessment.
(b) Claim for Refund or Adjustment.
(c) Statement of Benefit Wages and Rate Determination.
(d) Deputy's Findings and Determination.
(e) Deputy's Labor Dispute Determination.

(a) Determination and Assessment

Under a number of situations the Act provides that the Director of Labor may make a determination of liability and an assessment against an employer for the amount of contributions, interest and penalties due. This may arise from the employer's failure, neglect or refusal, to file contribution reports or the filing of insufficient or incorrect reports. It may arise if the collection of accrued contributions not yet due may be jeopardized by delay or if it appears to the Director that an employer has become liable for the payment of any contributions, interest or penalty not incurred directly by that employer. The Director in such cases, makes a determination of the employer's liability and assesses the amount of the contributions due. Notice of this, together with a copy of the Determination and Assessment is served on the employer by registered mail. If the employer disagrees with this Determination and Assessment, he has twenty (20) days from the date of the mailing of the Notice within which to file a Protest and Petition for Hearing. At the same time the employer may file a bond in the amount of 125% of the amount of the assessment in order to prevent the filing of a public notice of lien. If no protest is made within the prescribed time limit, the Determination and Assessment becomes final and is not subject to further review. If a protest is filed within the time limit the Director of Labor, assigns the matter to a representative for hearing.

(Further discussion of this category will be held in abeyance while the other categories are brought to the same stage of proceedings).

(b) Claim for Refund or Adjustment

If at any time within three years from the date any contributions, interest, or penalties were paid, the employer finds that such a payment was made in error, he may file a Claim for Refund or Adjustment with the Director. Upon receipt of such claim, the agency will allow the refund or adjustment as requested or will notify the employer of a denial, by an order of the Director of Labor. Upon receipt of such an order the employer has twenty days, as in the Determination and Assessment proceedings, to file in writing, a Protest and Petition for Hearing. This will then be assigned to the Director's representative for hearing.

(c) Statement of Benefit Wages and Rate Determination

A Statement of Benefit Wages is issued periodically to each employer, listing the benefit wages being charged to the employer. Since the charges of benefit wages is one of the factors of the employer's Variable Experience Rate, it is highly important that each employer is charged only with his proper benefit wages. Therefore, when the Statement of Benefit Wages is mailed to an employer he has by law thirty days from the mailing date to apply for a revision. The application for revision can be in letter form, like the Protest to the Determination and Assessment, or the Application for Refund or Adjustment. If the Director issues an Order striking the Application, for insufficiency, the employer may submit a sufficient application in an additional ten day period or the Director may issue an Order allowing the application in whole or in part, or deny it. A Petition for Hearing may then be filed and this Petition is then assigned to the Director's representative for hearing.

During the first quarter of the year, a Notice of Contribution Rate for that year is mailed to every employer. If he has not incurred liability for the payment of contributions for at least five years the employer receives a Contribution Rate of 2.7%. If he has incurred a liability for five years, then he receives a Variable Experience Rate, based upon certain factors as provided for in the Act.

If the employer receives a 2.7% rate and he has in fact incurred liability for five years or more, or if he is a successor employer and together with his predecessor has incurred liability for five years or more, he may file an Application for Review within fifteen days of the date of mailing, stating in the application the basis for such contention. If an employer receives a Variable Experience Rate and disagrees with that rate, he files an Application for Review in the same manner. The Director may rule on the sufficiency of the application and if it is insufficient the employer has ten additional days to file a sufficient application. After the filing of a sufficient application the Director will issue an Order allowing it in whole or in part or denying the Application for Review. To such order, the employer may file a Protest and Petition for Hearing within ten days specifying his objections. On receipt of such Petition, this matter is assigned to a representative of the Director to conduct a hearing.

Now that all the Protests and Petitions for hearing have been brought to the stage where they are assigned

to the Director's representative for hearing let us examine briefly the proceedings from then on. The hearing on these matters is held in the county where the employer has his principal place of business. If an employer desires, he may be represented at the hearing before the Director's representative. However, he can be represented only by an attorney at law. The statute states that the Order of he Director which gave rise to the hearing is *prima facie* correct and the burden is upon the person seeking to have the order modified or set aside, to establish the contrary. After the hearing the Director's representative prepares a report and recommendation. This report is filed with the Director of Labor and at the same time a copy is mailed to the attorney or employer. The employer then has ten days from the date of its mailing to submit to the Director his objections indicating his disagreement with the report and the reasons therefor. The Director of Labor then examines the report and the objections, if any, and the record, and arrives at a decision either affirming his original order in whole or in part, or revising it. This Decision of the Director of Labor is then mailed to the employer or his attorney and becomes the final administrative ruling as to the Unemployment Compensation Act. (We will leave the appeals on contributions and rate matters at this point to bring the two types of benefit claims appeals to this stage of the proceedings).

(d) Deputy's Finding or Determination

Prior to the payment of any benefits to an employee, the employer when he has availed himself of his rights, will receive from the Deputy a written notice showing the decision of the Deputy on the Application for Benefits. This Notice of Determination may be appealed from by the employer within nine days from the date of the mailing of the Notice of Determination. No benefits will be paid during this nine day period or until the Referee's decision is handed down if an Appeal is filed. On appeal, the agency will schedule the matter for oral hearing before the Referee (as distinguished from a Director's representative). This hearing is *de novo*. The parties may be represented by counsel. The Act provides that hearings may be conducted without conformity to the common law, statutory rules of evidence or technical rules of procedure. After the hearing, the Referee prepares a Decision on the matter, setting forth his findings of fact and his reasons for the Decision. A copy of the decision is mailed to the parties interested and may be appealed from within ten days after the mailing date. The appeal, when filed, together with a complete transcript of the proceedings before the Referee, is then transferred by the agency to the Board of Review.

The Board of Review is an independent body appointed directly by the Governor and may affirm or reverse the Referee or it may schedule a hearing for the purpose of taking evidence. After the hearing the Board of Review makes a decision in writing, signed by all of the members participating and notifies all the parties of its decision. This decision of the Board of Review is the final administrative decision under the Unemployment Compensation Act for all benefit appeals other than labor disputes. From the Board of Review the decision may be appealed to the Circuit or Superior Court, as will be discussed hereafter.

(e) Deputy's Labor Disputes Determination

There is one type of case that originates as a benefit claim but does not follow the above line of appeal. This is the labor dispute matter. Where the employer has notified the agency within five days of the existence of a labor dispute, he will receive a notice of the Deputy's Determination before any benefits are paid and has the right to appeal from that Determination. This Appeal must also be filed within nine days of the mailing date of the Determination. Instead of this appeal being referred to a Referee, the Director of Labor appoints a representative to conduct the actual hearing for him and to ascertain the facts. The rules governing this hearing are similar to those before the Referee or the Board of Review. The Director's representative prepares a report and the report and the record are referred to the Director of Labor. The Director then arrives at a Decision either approving the report in whole or in part or disapproving the report and specifically determines whether or not the individuals involved are eligible for benefits. This decision of the Director becomes the final administrative decision under the Unemployment Compensation Act, as the Board of Review's decision is in the other benefit cases.

Appeal to the Courts

After an employer avails himself of all of the rights of appeal within the administrative framework of the Unemployment Compensation Act and the matter is decided by the Board of Review or by the Director of Labor, the employer within thirty-five days from the date of mailing of the decision, may file a Complaint in the Circuit or Superior Court under the provisions of the Administrative Review Act.

The agency answers such a complaint by the filing of the complete original transcript of all of the proceedings or a certified copy of the transcript. In the case of the Director of Labor's decision with respect to assessments, refunds, Benefit Wage Statements, or Rate Determinations, the employer must pay to the agency the costs of preparation of the record of the proceedings at the rate of five cents per 100 words. If such costs are not paid, the agency is not obligated to answer the complaint. In benefit cases, no charge is made.

When any matter under the Unemployment Compensation Law comes before the Circuit or Superior Court, it is given precedence over any other civil case, except Workmen's Compensation cases. The hearing before the Court extends to all questions of law and of fact presented by the record before the Court. No new or additional evidence can be considered. No testimony will be taken by the Court. The Court is only concerned with whether the decision of the Director or of the Board of Review is supported by competent evidence in the record.

The judgment or order of the Circuit or Superior Court in an unemployment compensation matter is subject to further review by appeal directly to the Illinois Supreme Court in the same manner as in other civil actions.

The important point to remember is that by the terms of both the Unemployment Compensation Act and the Administrative Review Act, the court cannot take jurisdiction if the decision complained of became final because of failure on the part of the employer to file protests within the necessary time limits at any stage of the proceedings. It is essential therefore, that at each step of the proceedings the proper protests and petitions be filed.

DECALOGUE MEMBERS — CIVIC LEADERS

This is the sixth of a series of articles dealing with the participation of members of our Society in organizations of local and national significance.

Already published in the previous issues of the Journal, were contributions dealing with *The Jewish War Veterans of America, American Jewish Congress, The Hebrew Immigrant Aid Society, The Jewish Labor Committee,* and *The Board of Jewish Education.*

The B'nai B'rith Story

By PHILIP H. MITCHEL

Member Philip H. Mitchel is Master in Chancery of the Circuit Court of Cook County, President of District 6, Grand Lodge B'nai B'rith, and Secretary of the Covenant Club. He has aided in the organization of 17 Lodges in the Chicago area. He is also active in several communal and philanthropic associations.

Since its founding by twelve men 110 years ago, B'nai B'rith has become the largest Jewish service organization in the world, with a membership of well over 350,000 men and women.

Orphanages, hospitals, homes for the aged and other charitable institutions were in most part the recipients of its early endeavors and continue to the present time to be the beneficiaries of its kindness. Today, however, its many philanthropies and services extend to the armed forces in the form of blood donations, bond drives, the establishment of game rooms in bases, hospitals and on board ship and entertainment programs in veterans' hospitals.

During its recent Triennial Convention, B'nai B'rith received a citation from the American National Red Cross for its nation-wide blood donor campaign. Shortly after the close of World War II, the first of the major citations was awarded to B'nai B'rith by the U. S. Navy Department "in recognition of exceptional accomplishments in behalf of the United States Navy and of meritorious contribution to the national war effort." On February 4, 1946, the then General of the Army, Dwight D. Eisenhower, presented a similar citation to B'nai B'rith on behalf of the War Department, also the first to be awarded to any civilian service group.

On over 200 college campuses, B'nai B'rith Hillel Foundations are attempting to inculcate Jewish youth with the positive values of their heritage and by a program of spiritual and cultural guidance to develop the future leaders of Jewry.

A vocational guidance service department has been set up to help young people make wise career decisions in a highly competitive and often antagonistic society.

B'nai B'rith Youth Organizations are one of the proudest achievements of the parent body. Its well rounded program of social, athletic, cultural, religious, inter-faith and community activities creates an informed generation of Jewish youth. Each year in the City of Chicago, B'nai B'rith sponsors a basket ball tournament between its youth organization and the Catholic Youth organization, another instance of its effective plan in community and inter-faith activity.

Since 1865, B'nai B'rith has been associated with the effort of the Jewish people in its struggle for a free Israel. Through the years it has solidified its bond with the Israeli community by contributing scholarships in support of the Hebrew University on Mt. Scopus, by establishing a $25,000 housing fund, by donating $10,000 to the Children's Home in Jerusalem, by allocating $25,000 to the Chaim Weizmann Research Foundation at Rehovoth, by sending appropriations of $100,000 in the years 1936 and 1941 to the Jewish National Fund for the purchase of land, where B'nai B'rith colonies were to be established in memory of Alfred M. Cohen and Henry Monsky. $20,000 was appropriated by B'nai B'rith for child rescue work being conducted by the Youth Aliyah movement of Hadassah. In our own city of Chicago, the Chicago B'nai B'rith Council filled an 18-car "Friendship Train" with 600,000 pounds of vitally needed commodities and sent it across the seas. This is only a part of the long and impressive list of money and

materials contributed by the men and women of B'nai B'rith for the defense and sustenance of our brethren in Israel.

The Anti-Defamation League of B'nai B'rith was conceived thirty-seven years ago by a brilliant Chicago lawyer, Sigmund Livingston. It is dedicated to the preservation of our American heritage through education and the force of public opinion and by its magnificent contribution to the improvement of better relations among all peoples has become a potent and dynamic force in fighting for civil liberties and for the defense of the human spirit.

In its never ending task of strengthening and fortifying the forces of democracy, B'nai B'rith has for many years sponsored an Americanism program designed to preserve and advance the free society it cherishes. It is the proud possessor of an award by the Heritage Foundation, the only one given to an organization of its kind, for its help in turning out the vote during the last National election.

Two of B'nai B'rith's most recent projects are the Social Service Center at the Mayo Clinic in Rochester, Minnesota, and the Institute of Judaism, further proof of the flexibility of this vast and ever growing organization.

B'nai B'rith's program is based on the highest moral principles of Benevolence, Brotherly Love and Harmony and is designed to reach all mankind regardless of race, color or creed.

HARRY J. DIRECTOR

Member Harry J. Director was elected chairman of the newly organized Council of Traditional Synagogues of Greater Chicago.

The Council will act as a service organization to its constituent synagogues, and will engage in civic action programs effecting religious Jewish life in Chicago.

PHILIP R. DAVIS

Member Philip R. Davis was elected president of The Army and Navy Club. The club's membership is made up of officers of all branches of the United States Armed Forces. Reciprocal relations are maintained with similar clubs in the country's major cities.

Civic Affairs Committee Active

Our Civic Affairs Committee, First Vice-President Elmer Gertz, chairman, kept a vigilant watch on the session of the Illinois General Assembly which was recently concluded. The Broyles Bill, which would tend to stifle freedom of utterance, and the Larson Bill, which would kill the public housing program, were both passed by the legislature, but vetoed by Gov. William G. Stratton. On direction of the board of managers, President Paul G. Annes wrote to the governor commending him for his vetoes.

The governor supported a fair employment practices bill, but this was defeated in the state Senate after passing the House. In the Senate, Decalogue members Marshall Korshak and Edward P. Saltiel were among the strong supporters of the measures. Plans are already afoot for further efforts towards securing the enactment of an F. E. P. C. law.

On the national scene the Civic Affairs Committee has likewise been active, largely in urging the enactment of new immigration and naturalization laws in place of the much criticized McCarran-Walter Act.

The fight for public housing has apparently been lost in Washington, despite the almost heroic efforts of Decalogue member Congressman Sidney R. Yates.

The committee is making a study of the problem of Congressional investigation committees and hopes to come up with some recommendations for a code of fair procedure.

MAXWELL ABBELL

The Biennial citation of the National Federation of Jewish Men's Clubs was awarded this year to member Maxwell Abbell "for having made the greatest contribution to the promotion of conservative Judaism and its principles during the past year."

SAMUEL A. HOFFMAN

Member Samuel A. Hoffman is the author of *My Brother's Keeper,* a book which expounds the philosophy of philanthropy. Hoffman, a well known communal leader, and a former assistant states attorney is Vice President of the Exchange National Bank.

Law in Inter-American Relations

The Inter-American Bar Association of which The Decalogue Society of Lawyers has been a member for several years, sponsored April 14, a luncheon in Washington, D. C., in celebration of Pan-American Day. Citizens of eight American Nations attended the meeting. Among the distinguished guests present were representatives of several bar associations, U. S. government officials and several educators. George Maurice Morris, former President of the American Bar Association and Chairman of the Executive Committee of the Inter-American Bar Association presided. The principal address, which follows, was delivered by Dr. Guillermo Nannetti, of Columbia, Chief of the division of Education, Pan-American Union.

The next, eighth conference of the Inter-American Bar Association will take place in Caracas, Venezuela, November 18-27. On at least two former occasions delegates from our Society attended conferences held in Latin-American countries. Those of our members whose business or pleasure travels might find them at the time of the conference in South America and who wish to attend are invited to make inquiries at our offices, 180 W. Washington Street, or address William Roy Vallance, Secretary General, The Inter-American Bar Association, Portland Building, 1129 Vermont Avenue, Washington 5, D. C.

Dr. Guillermo Nannetti's address:

It is entirely fitting that Pan-American Day should be commemorated by lawyers. For if inter-American relations offer an innovation in any field, it is what has been accomplished in Law. I am going to take the liberty of suggesting to the Inter-American Bar Association a topic for reflection on this aspect of inter-American relations.

A few years ago, two of the Latin-American countries were on the brink of war. They had mobilized their young men at their border, and conflict was imminent. The Organization of American States went into action. It was the first test of the inter-American institutions since the signing of the Bogota' charter and the Rio de Janerio Treaty of Reciprocal Assistance.

Representatives of the Organization of American States visited the belligerent countries. Twenty-four hours later, the hostile armies were fraternizing on the border. This is an event of the highest significance in the evolution of American Law. In former years bloody wars like that of the Chaco, between Bolivia and Paraguay, and serious disputes such as that of Leticia, between Colombia and Peru, had given evidence that this new world was not so new as we had hoped, and that man will not learn by experience, but commits the same mistakes, however he may be.

The test of the validity of our inter-American institutions made during the threat of war to which I have referred, demonstrated that in the American world a typically American moral conscience, political wisdom and power of persuasion is growing. We may assert that the danger of war among the American nations has been banished forever. No doubt, certain circumstances, peculiar to the American world, have favored this development. This very fact augurs well for the future of these young, prosperous nations bound together by a system of Law as well as by cultural and economic ties.

Everything appears to indicate that the youth of America has before it a world of plenty that justifies its being called the Continent of Hope.

If we believe in America as the land of the future, it is because we accept it as the Continent of Law, for it is only on the recognition of Law that we can build the future.

If we believe in America as the Continent of Peace, it is because America is the Continent of Law. For Law is Peace. Wherever peace is threatened, there is some form of oppression or some disregard for Justice.

There is, however, one matter which I should like the Inter-American Bar Association to consider. Inter-American Law has two aspects—one, the rights and duties of the State; the other, the Rights and Duties of Man. It is all very well to speak of Rights and Duties. "I learned," says Gandhi, "from my mother, who was illiterate but very wise, that all rights that deserve to be preserved are those that are born from a duty performed."

We Americans have achieved the triumph of Law in Inter-American relations. But, have we achieved a similar triumph in human relations, within the borders of our States? International relations must be built on the recognition of the fundamental Rights of Man, within the State. Otherwise, they will be built on the shifting sands of diplomacy or on the eruptive foundation of arbitrariness. Von Ihering says, in his monumental work on "The Struggle for Justice:" "Those who defend the rights of the individual are the only ones who can fight for public law and for the law of nations . . . The true school of political science for a people is not public law but private, and if we want to know how a nation will meet its international obligations, in any given case, we need only inquire how its citizen defends his personal rights in private life." This is the great question what we present to the lawyers of the Americas. We have adopted a Declaration of the Rights and Duties of American Man. We must ask, however, which of those Rights are fully recognized in the American countries. Those Rights insure political and social peace, which is the only firm basis for international peace.

BOOK REVIEWS

The Spirit of Jewish Law, by George Horowitz. Central Book Co. 812 pp. $12.50.

Reviewed by PAUL G. ANNES

To most people, lawyers and laymen alike, Jew or non-Jew, the term "Jewish Law" is vague, indeed. That is not surprising when we consider that almost all its sources are in the Hebrew and Aramaic languages. Apart from the Bible, these have not heretofore been made readily available in English. Thus almost all of us have been deprived of the means to know and appreciate a significant facet of our cultural heritage, a system of law as unique as the Roman or the English Common law, older than either and more rooted in the history of Euro-Christian civilization.

This void has now been admirably filled. George Horowitz, a practicing lawyer in New York, his birthplace, has combined well the background of his home with the knowledge gained at Harvard, Columbia, the Jewish Theological Seminary of America, and in later years to give us this much needed work on Jewish Law. Thanks to his labors we in America and all English speaking people will now have in one volume, well-indexed, classified and restated the basic Law as given in the Old Testament and as

"developed in the post-Biblical period, . . . from the pre-Christian era through the generations of the rabbis of the Talmud to the rabbinical legal authorities of the Middle Ages and down to our own day" (David de Sola Pool)

It is not a book exclusively for scholars and lawyers. It is for all interested in the history and development of Jewish legal institutions and their cultural impact on the world. Such is the arrangement of the book that one may read portions of it at a time without any loss of continuity; and it all makes surprisingly easy reading.

It would necessarily be unrepresentative and therefore ungenerous to give a few examples to illustrate what has been said, so wide is the range of the material. About a tenth of the volume is devoted to a presentation of the main sources of Jewish law. The rest covers the various divisions of the subject proper: the treatment of man and animals; penal laws; marriage and divorce and the general field of persons; property, its acquisition and disposition; the law of contracts and torts; and, finally, the adjective law, having to do with judicial procedure. Each subject is broken down and sub-titled, making it convenient to look up any particular question.

Jewish Law is not, of course, the same as the law of the State of Israel. To round out the subject, the author has appropriately added a few pages of Special Comment to explain the basis of the latter.

World Copyright Encyclopedia. H. L. Pinner, editor. Published by A. W. Sijthoff, Leyden, Holland. Volume 1, 816 pp. (References A-Ci), $27.50.

Reviewed by MORTON SCHAEFFER

Member of our Board of Managers Morton Schaeffer, is a member of the committee on International Copyrights and Copyright Law of the American Bar Association, and a Trustee of the Copyright Society of the United States of America.

This is the first volume, the only as yet available, of a projected series of four (4) and is the first attempt at a comprehensive work on world copyright; it has been in preparation for the past ten years. The material has been brought down to December 31, 1951; supplements are to be added from time to time.

Many outstanding copyright experts throughout the world have contributed to this work which gives the application of the copyright laws of some 70 countries. The subject matter is alphabetically arranged and under each heading an explanation of the law of copyright each country is given with direct references to where the law can be found. There is also information relative to the various societies and organizations which have been set up in many countries for the benefit of publishers, authors and composers.

While this work may prove desirable for quick reference in the field of international copyright, it does not provide a translation of the copyright laws of each country.

If the United States should ratify the Universal Copyright Convention drafted in Geneva, Switzerland, in September 1952, and now before the U. S. Senate, this work should prove even more valuable as the Convention is built around the laws of the various subscribing countries.

H. H. Beutler, 157 W. 59th St., New York City, New York, is the American distributor for the *World Copyright Encyclopedia.*

ELMER GERTZ

The current issue of the "Franklin D. Roosevelt Collector" a publication of the FDR Association, carries an article by our first vice-president Elmer Gertz entitled "Roosevelt and Stevenson—Their First Presidential Campaigns."

Gertz has also published articles recently in the Journal of the Illinois State Historical Society and, in *Manuscripts,* both on Carl Sandburg.

Lawyer's LIBRARY

The *Editor* earnestly suggests close examination of the titles listed below.

NEW BOOKS

Anderson, J. N. & May, R. W. *McCarthy: the man, the senator, the "ism."* Boston, Beacon Press, 1952. 431 p. $3.75.

Appleman, J. A. *Successful appellate techniques.* Indianapolis, Bobbs-Merrill, 1953. 1089 p. $17.50.

Busch, Francis X. *Guilty or not guilty?* Indianapolis, Bobbs-Merrill, 1952. 287 p. $3.50. (Notable American Trials series).

Chafee, Zechariah, Jr. *How human rights got into the Constitution.* Boston, Boston Univ. Press, 1952. 90 p. $2.50.

Dunham, Allison. *Cases on modern real estate transactions.* Brooklyn, Foundation Press, 1952. 975 p. $8.50.

Fins, H. G. *Federal appellate practice.* Chicago (77 W. Washington St.), The Author, 1953. 35 p. Apply to Author.

Goodrich, H. F. *A case on appeal—a judge's view; Conduct of the appeal—a lawyer's view,* by Ralph M. Carson; *The argument of an appeal,* by John W. Davis. (August 1952) Philadelphia, American Law Institute, Committee on Continuing Legal Education, 1952. 190p. $2.50. (Paper)

Hand, Learned. *The spirit of liberty;* papers and addresses. 2d ed., enl. N. Y., Knopf, 1953. 285 p. $3.50.

Harno, A. J. *Legal education in the United States;* a report prepared for the Survey of the Legal Profession. San Francisco, Bancroft-Whitney, 1953. 211 p. $3.50.

Illinois. *General Assembly. Commission on sex offenders.* Report. Springfield, The Author, 1953. 52 p. Apply.

Kennan, George F. *American diplomacy* 1900-1950. Chicago, University of Chicago Press, 1951. 146 p. $2.75.

Mountain states legal directory. 1953 ed. Los Angeles (Box 4636), Legal Directories Pub. Co., 1953. $3.00.

Ploscowe, Morris, ed. *Organized crime and law enforcement.* New York Grosby Press, 1952. 344p. $5.00. (Report & research studies of the American Bar Assn., Commission on Organized Crime)

Riesman, David. *Faces in the crowd; individual studies in character and politics.* New Haven, Yale Univ. Press, 1952. 751p. $5.00. (Yale University studies in national policy)

Rogers, D. I. *Teach your wife to be a widow.* N. Y., Holt, 1953. 93 p. $2.00.

Steiner, G. A. *Government's role in economic life.* N. Y., McGraw-Hill, 1953. 440 p. $6.00.

Thompson, G. N. *The psychopathic delinquent and criminal.* Springfield, Ill., Thomas, 1953. 161 p. $4.50.

Tracy, John E. *Handbook of the law of evidence.* New York, Prentice-Hall, 1952. 400p. $4.00.

Uniform laws annotated. 1952 pocket parts. Brooklyn, Thompson, 1952. $16.00.

U. S. Library of Congress. Copyright Office. *Copyright law of the United States of America.* Rev. to Jan. 1, 1953. Washington, Govt. Print. Off., 1953. 44 p. $0.20.

U. S. Patent Office. *The story of the American patent system,* 1790-1952. 2d ed. Washington, Govt. Print. Off., 1953. 35 p. $0.20.

Whitney, Frederick A. *Cases on the law of sales.* 3d ed. Brooklyn, St. John's University Press, 1951. 351 p. $5.00.

Wyzanski, C. E., Jr. *A trial judge's freedom and responsibility.* New York, Association of the Bar of the City of New York, 1952. $1.50. (The eleventh annual Benjamin N. Cardozo lecture)

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APPOINTMENT BOOK AND DIRECTORY

The 1954 Decalogue Appointment Book and Directory will be shortly on the press. The Committee in charge urges all members who have moved their offices or changed their telephone numbers during 1953 to notify the Society's offices at 180 W. Washington St. of the change immediately so that all listings in the Directory may be up to date.

HOLLEB IVI HEAD

Member Marshall M. Holleb was elected chairman of the Independent Voters of Illinois. He is a law partner of member, Congressman Sidney R. Yates.

SEGREGATION

. . . "We again approach a climax in this fight. But the climax does not represent the conclusion of the fight. We can only predict a long, intensive and expensive struggle.

"We lawyers can assure you of a carefully planned program of court cases, but this alone will not suffice.

"It is imperative that we have also an intensification of our community action by you, so that in each community we will have an active educational campaign among our church groups, fraternal groups, labor unions and the general public, constantly emphasizing the disastrous impact of segregation."

Thurgood Marshall, chief counsel of the National Association for the Advancement of Colored People, at the association's 44th Annual Convention.

The Editor will be glad to receive contributions of articles of modest length, from members of The Decalogue Society of Lawyers only, upon subjects of interest to the profession. Communications should be addressed to the Editor, Benjamin Weintroub, 82 West Washington Street, Chicago 2, Ill.

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The Law Student's Wife

D. W. P.

He's got books,
He's got classes,
He's got notes
And horn-rimmed glasses.

He's got abstracts,
Trial cases,
And he trots
The legal paces.

He's got bills
He's got notes,
He's got Profs
On whom he dotes.

He's got loves,
He's got hates,
According to
The mark he rates.

He's got friends,
They're law students,
Bickering
Of Jurisprudence.

He's got Langdell
And the Libe,
Lots of places
To imbibe

Knowledge, whisky,
Beer or gin,
At his law club
Or The Inn.

He can argue,
He can chatter,
Night or day
It doesn't matter.

But with so much
Joy and strife,
Why in hell
Did he take a wife?

He seldom sees her,
When he does
The air's with
Legal terms a-buzz.

Her neat house
Is a mess of papers,
While he raves on
Of wills and rapers.

She hears cases
Cause and why,
Till she'd love
To pop that guy.

They play bridge,
Well, bridge of sorts,
Till he remembers
That case in Torts.

And when he's late
For every meal,
He goes and blames
Professor Beale.

And should she try
To have a guest,
If nonlegal
It's just a pest.

For he must explain
The law he knows,
And then it's too late
For movie shows.

And so, your Honor,
May I say:
"To hell with the Law
And its in re.

My second marriage
May be less prudent,
But it won't be
With a Law Student."

From *The Judicial Humorist.* Edited by WILLIAM L. PROSSER. Courtesy of Little, Brown and Company.